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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,210	12/19/2001	Daniel C. Buchner	Moen 565-Cont	9383

7590 04/23/2003

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EXAMINER

WALTON, GEORGE L

ART UNIT	PAPER NUMBER
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3753

/6

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/026,210

Applicant(s)
Buchner et al

Examiner
George L. Walton

Art Unit
3753



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16, 17, and 23 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16, 17, and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Aug 13, 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 16-17 and 23 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Valley. The plurality of independent and separate water control plumbing fixtures are readable on element 18 (see column 3, lines 17-21, which recites that faucet assembly 10 includes a pair. However, only one assembly is discussed and shown.) Elements 12 and 22 are readable on the claimed waterways. The visible surfaces of the waterways are readable on elements 60 and 70. The portions below elements 60 and 70 are readable on the non-visible surfaces. The functional and decorative elements are readable on elements 62, 64, 66 and 92.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 16-17 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Condon et al. The water way is readable on elements 31 and 42. The threaded portion 45 is readable on the visible surface of the waterway and the non-visible surface is the portion below element 42. Furthermore, this teaching is shown for both the shower head assembly in figures 5 and 6 and the spout shown in figure 10. Figures 5 and 6 and figure 10 are readable on the separate and independent water control plumbing fixtures.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fife in view of Valley. The above claims are readable on the patent to Fife with the single exception of having a specific type of valve member with a functional and decorative element and a waterway with visible and non-visible surfaces (In the patent to Fife, the functional and decorative element is readable on elements 5, 7 and 8a. The waterway can not be determined as shown in Figure 1. It is obvious that there is one, because it is well known in the art.) The patent to Valley teaches the above exception. In view of the teaching of Valley it would be obvious to one of ordinary skill in the art, at the time the invention was made, to replace the water control plumbing fixture 5, 7 and 8a with the water control plumbing fixture 10, 12, 18, 22, 62 and 72, if desired. Such a modification would provide no unobvious or unexpected result. The plurality of independent and separate water control plumbing fixtures are readable on element 18 in the patent to Valley (see column 3, lines 17-21, which recites that faucet assembly 10 includes a pair. However, only one assembly is discussed and shown.) Elements 12 and 22 are readable on the claimed waterways. The visible surfaces of the waterways are readable on elements 60 and 70. The portions below elements 60 and 70 are readable on the non-visible surfaces. The functional and decorative elements are readable on elements 62, 64, 66 and 92.

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In the patent to Fife the spout is readable on element 15 and 35. The waterway of the spout is readable on elements 14 and 39. The visible surface is readable on elements 38-40 and the non-visible surface is readable on the portion below wall 16. The functional and decorative elements are readable on elements 35, 55 and 56.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George L. Walton whose telephone number is (703) 308-2596. Upon receipt of this action, the applicant and/or attorney is invited to contact the examiner to discuss the above action. My normal business hours are between 8:30 AM to 5:00 PM. Should any attempt after one business day to reach the examiner by telephone is unsuccessful, you may contact the supervisor, Mr. Michael Buiz on (703) 308-0871. My fax number is (703) 308-7765.

Any inquiry of a general nature or relating to the status of this application and any pre-examination proceedings on this application should be directed to the receptionist whose telephone number is (703) 308-0861.

GLW
April 21, 2003


GEORGE L. WALTON
PRIMARY PATENT EXAMINER
TECHNOLOGY CENTER - 3700
ART UNIT - 3753

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